

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JIAJIE ZHU,
Plaintiff,

v.

JING LI, et al.,
Defendants.

Case No. 19-cv-02534-JSW (TSH)

DISCOVERY ORDER

Re: Dkt. Nos. 53, 54, 58

The parties have a discovery dispute over the format of Defendants' document production. Plaintiff argues that "what has been produced has been produced without any sense or organization, and not in any searchable format." ECF No. 53 at 7. "[W]hat has been produced, for the vast majority of produced documents, are largely illegible hundred-page .pdfs for which no OCR was done and for which the documents are in such poor shape that despite plaintiff's efforts to perform optical character recognition pages, has been unsuccessful. [¶] Moreover, the documents do not appear to be in any organizational format. Personal expense reimbursement requests from Mr. Chen are interspersed with packing slips or bills of lading. Multiple transactions are lumped together as though they were part of one document, when they have no logical relationship and either are many separate documents or have been shuffled." *Id.* at 7-8.

Defendants respond that "Defendants' counsel processed hard copies of documents—in the way that they were kept in the ordinary course of business—through an ediscovery vendor, which scanned and OCR'd them to the best of its ability. Defendants' counsel then produced to Plaintiff's counsel each of the files the e-discovery vendor created from the hard copies." ECF No. 54 at 5. "Moreover, Plaintiff has cited to no authority that requires Defendants to do any more than they have done already: produce all non-privileged documents as they were kept in the

ordinary course of business.”

To see who was telling the truth, the Court ordered Plaintiff to file a few examples of the lengthy .pdf files he asserts are improper. ECF No. 57. Plaintiff has done so, ECF No. 58, and the Court has had the opportunity to review those examples.

The document production is as Plaintiff describes. Federal Rule of Civil Procedure 34(b)(2)(E)(i) states that unless otherwise stipulated or ordered by the court, “[a] party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request.” There has been no stipulation or order otherwise, and Defendants certainly did not organize and label their documents to correspond to the categories in the request. Therefore, they were obligated to produce them as they are kept in the usual course of business.

However, Defendants did not do that either. Nobody keeps their hard copy documents in one enormous pile, with no staples or paper clips, folders, drawers, boxes, or any organizational structure. The Court orders Defendants to recollect their documents and produce them in compliance with Rule 34. This means, at a minimum, that each document must be separately unitized (i.e., it must be clear where each document begins and ends and what is an attachment to what) and whatever organizational structure the documents are stored in (such as folders) must be replicated in the production. The Court orders Defendants to do this within 30 days.¹

IT IS SO ORDERED.

Dated: April 9, 2021


THOMAS S. HIXSON
United States Magistrate Judge

¹ Based on ECF No. 67 and the discussion at the hearing, it appears that the OCR problem has largely been solved. To the extent that the searchability of the documents remains less than perfect, that’s obviously because of the low quality of the hard copy documents themselves and is not Defendants’ fault.